

## REMARKS

### Information Disclosure Statement

The Examiner states that the IDS filed on October 1, 2001 fails to comply with the provisions of 37 CFR §§ 1.97, 1.98 and MPEP § 609 because the three Sample references do not include a date. Applicants' Attorney, in a conversation with the Examiner, has already clarified which references correspond to which date, but the Examiner requests that Applicants memorialize their understanding in writing.

Therefore, Applicants' Attorney asserts that the Torengos picture represents the 1999 test while the Eagle picture represents the 1997 test.

According to the Examiner's request, Applicants believe that this clarification should now bring the Information Disclosure Statement into compliance with 37 CFR § 1.97, 1.98 and MPEP § 609 and respectfully request acceptance thereof by the Examiner.

### Objection to the Specification

The disclosure is objected to because of the following informalities: the attorney docket numbers should be removed when referring to an application as shown on page 1 of the disclosure.

Applicants have removed the attorney docket number shown on page 1 and submitted a replacement paragraph therefor. Applicants therefore respectfully request removal of the Examiner's objection to the specification.

### Elections/Restrictions

Applicants hereby affirm their election of Claims 1-18 (and new Claim 22) as the set of claims that Applicants are prosecuting on the above-captioned application number.

### State of the Claims

Claims 19-21 have been canceled. New Claims 22 and 23 have been added.

### 35 U.S.C. § 112 Rejection

Claim 2 stands rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to enable one of skill in the art

to make or use the invention. Specifically, the Examiner asserts that the term "engagement span" is not described by the specification, nor does the specification teach how to calculate the engagement span.

Applicants respectfully disagree with the Examiner. First, Applicants have amended Claim 2 to remove the terms "engagement span" from that claim. Also, Applicants have written new claim 22 that claims the engagement span of now-amended Claim 2. No new matter has been added.

Applicants contend that the engagement span is described both in the specification and in the figures of the specification. For example, Applicants describe the engagement span in the disclosure itself.<sup>1</sup> Therein, the engagement span is described as being certain percentages of the vertex span that is useful to help obtain the optimal orientation of the axis of curvature of the chip.<sup>2</sup>

Furthermore, the location and orientation of the engagement span is shown in Figures 3a, 3b, 3c, and 3d. In each figure, the engagement span is shown as being geometrically similar to the vertex span. Also, Applicants respectfully assert that 90% of any calculated number (i.e., the vertex span) is readily calculable, and one of skill in the art would know how to calculate 90% of that number; namely, through multiplication of 0.90 times the vertex span.

Applicants therefore respectfully request reconsideration and allowance of Claim 2 over the Examiner's 35 U.S.C. § 112, first paragraph, rejection.

Claims 2, 7, 9, 14 and 16 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

Regarding Claim 2, Applicants have already discussed the identity of the engagement span as well as its calculation *supra*. Applicants therefore refer to that discussion herein.

For Claim 7, the Examiner states that it recites the terms "said base" which lacks the proper antecedent basis.

Applicants have amended Claim 7 by removing the term "said base" and added new Claim 22 that Applicants believe now particularly points out what is the proper invention. No new matter has been added.

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<sup>1</sup> Applicants' Specification at page 9, lines 16-23.

<sup>2</sup> *Id.* at page 9, lines 21-24; (i.e., "The engagement span is about 90% of the vertex span, more preferably about 70%, most preferably about 50%...")

In Claim 9, the Examiner points out that the phrase "said restricted end" lacks the proper antecedent basis.

Claim 1 has been further amended to provide proper precedent so that the above phrase in Claim 9 no longer lacks the proper antecedent basis. No new matter has been added.

Given Applicants' discussion and claim amendments herein Applicants respectfully request reconsideration of Claims 2, 7, 9, 14 and 16 over the Examiner's 35 U.S.C. § 112, second paragraph, rejections.

#### 35 U.S.C. § 102 Rejection

Claims 1-4, 9, 12 and 16-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hreschak (GB 1,321,889).

The Examiner states that Hreschak '889 teaches a snack product comprising a body curved about a first axis thus forming a dip containment region with an open end, sides that are not parallel to the axis, restriction of movement to the sides and rear, an engagement span that is 90% of the vertical span, the axis being perpendicular to the open end, sidewalls, a restricted end that is less than 75% of the open width, a vertical taper of less than 45°, and a varying radius of curvature along its length (see Figures 1-4).

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants have amended Claim 1 to include the limitation of a "stackable", uniform snack piece. Support for the limitation is within Applicants' specification.<sup>3</sup> No new matter has been added.

Clearly, the food product of Hreschak '889 is not stackable. The folded finger portion 34 that resides at the end of Hreschak's food product would render stacking of his product impossible, because the folded finger portion 34 could not in fact be stacked one on top of another.<sup>4</sup> In contrast, Applicants' entire snack piece can be stacked and placed into a nested arrangement for packaging into a container designed for such an arrangement.<sup>5</sup> Applicants' stackable feature is not taught or suggested by Hreschak '889; nor is it inherently derived from

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<sup>3</sup> Id. at page 16, lines 16-20.

<sup>4</sup> Hreschak (GB 1,321,889) at Figure 5.

<sup>5</sup> Applicants' Specification at page 16, lines 19-24; and Figures 12, 14 and 15.

Hreschak's figures or disclosure. As such, it is a missing element that cannot be properly included in a rejection against Applicants' claims based upon anticipation.

Applicants therefore respectfully request reconsideration and allowance of Claims 1-4, 9, 12 and 16-17 over the Examiner's 35 U.S.C. § 102(b) rejection.

Claims 1-5, 8-9, 12-14 and 17-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McNeel, et al. (U.S. Patent No. 6,412,397).

Filed herein is a 37 CFR § 1.131 Affidavit that swears behind the earliest filing date of McNeel '397, namely February 7, 2000. Applicants certify, by way of the Affidavit, that they were in possession of their invention before the above date.

Applicants therefore respectfully request reconsideration and allowance of Claims 1-5, 8-9, 12-14 and 17-18 over the Examiner's 35 U.S.C. § 102(e) rejection.

#### 35 U.S.C. § 103 Rejection

Claims 10-11 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hreschak '889.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations. (MPEP § 2142).

Applicants have amended Claim 1 to include the limitation of a "stackable", uniform snack piece. Support for the limitation is within Applicants' specification.<sup>6</sup> No new matter has been added.

As can readily be seen in his figures, the food product of Hreschak '889 is not stackable. The folded finger portion 34 that resides at the end of Hreschak's food product would render stacking of his product impossible, because the folded finger portion 34 could not in fact be stacked one on top of another.<sup>7</sup> Nor does Hreschak '889 teach or suggest stacking his snack pieces. Given that Hreschak's folded finger portion 34 constitutes about one-third of the total length of his snack piece, Applicants contend that could not have been contemplated by Hreschak

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<sup>6</sup> Id. at page 16, lines 16-20.

<sup>7</sup> Hreschak (GB 1,321,889) at Figure 5.

'889 to have created a stackable snack product since the geometry of such products must allow for the ready and easy positioning of one such product one top of another such product.<sup>8</sup>

Furthermore, Applicants assert that the Hreschak's design, i.e., the folded finger portion 34, teaches away from Applicants' claim of a stackable snack piece because Hreschak's folded finger portion 34 renders stacking of his snack piece as an impossibility. In contrast, Applicants' entire snack piece can be stacked and placed into a nested arrangement for packaging into a container designed for such an arrangement.<sup>9</sup> Applicants' stackable feature is not taught or suggested by Hreschak '889.

Thus, Applicants respectfully request reconsideration and allowance of Claims 10-11 and 15 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 10-11 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McNeel '397.

As noted previously, a 37 CFR § 1.131 affidavit has been filed herein to swear back of McNeel's earliest filing date of February 7, 2000. Therefore, the Examiner's rejection is obviated and should be withdrawn as to the above-listed claims in view of McNeel '397.

Applicants therefore request reconsideration and allowance of Claims 10-11 and 15 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 5 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hreschak '889 in view of McNeel '397.

Applicants contend that the combination of Hreschak '889 and McNeel '397 is improper. Applicants have filed a 37 CFR § 1.131 affidavit that swears behind McNeel's earliest filing date of February 7, 2000, thus removing McNeel '397 as a viable reference against Applicants' claim.

Therefore, Applicants believe that the Examiner's rejection herein is obviated by Applicant's '131' Affidavit and respectfully request reconsideration and allowance of Claims 5 and 8 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hreschak '889 in view of Blish [Des. 166,524].

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<sup>8</sup> Id. at page 3, lines 73-76.

<sup>9</sup> Applicants' Specification at page 16, lines 19-24; and Figures 12, 14 and 15.

Applicants believe that the combination of Hreschak '889 in view of Blish '524 is improper.

As noted herein previously, Applicants respectfully contend that the design of Hreschak '889 teaches away from Applicants' stackable snack piece. Such teaching away is not cured by the combination of Hreschak '889 in view of Blish '524, because Hreschak's teaching away from Applicants' invention removes it as a viable reference in any obviousness rejection, singly or in combination with one or more references.

Hence, Applicants respectfully request reconsideration and allowance of Claims 5-7 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McNeel '397 in view of Blish '524.

Applicants contend that the combination of McNeel '397 in view of Blish '524 is improper. Applicants have filed a 37 CFR § 1.131 affidavit that swears behind McNeel's earliest filing date of February 7, 2000, thus removing McNeel '397 as a viable reference against Applicants' claims.

Applicants therefore request reconsideration and allowance of Claims 6-7 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 13-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hreschak '889 in view of Bezek (U.S. Patent No. 6,472,007).

As noted herein previously, Applicants respectfully contend that the design of Hreschak '889 teaches away from Applicants' stackable snack piece. Such teaching away is not cured by the combination of Hreschak '889 in view of Bezek '007, because Hreschak's teaching away from Applicants' invention removes it as a viable reference in any obviousness rejection, singly or in combination with one or more references.

Applicants therefore respectfully request reconsideration and allowance of Claims 13-14 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hreschak '889 in view of Ipema [Des. 300,199].

As noted herein previously, Applicants respectfully contend that the design of Hreschak '889 teaches away from Applicants' stackable snack piece. Such teaching away is not cured by

the combination of Hreschak '889 with Ipema '199, because Hreschak's teaching away from Applicants' invention removes it as a viable reference in any obviousness rejection, singly or in combination with any other reference.

Applicants therefore request reconsideration and allowance of Claim 18 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McNeel '397 in view of Hreschak '889.

Applicants contend that the combination of McNeel '397 in view of Hreschak '889 is improper. Applicants have filed a 37 CFR § 1.131 affidavit that swears behind McNeel's earliest filing date of February 7, 2000, thus removing McNeel '397 as a viable reference against Applicants' claims.

Applicants therefore request reconsideration and allowance of Claim 16 over the Examiner's 35 U.S.C. § 103 rejection.

#### SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the above cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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